

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TIMOTHY G. O'HAVER,

Petitioner,

v.

VINCENTE M. RUIZ.

## Respondent.

CASE NO. C15-5797 RBL

## **ORDER ADOPTING REPORT AND RECOMMENDATION**

The Court, having reviewed the Report and Recommendation of Magistrate Judge J. Richard Creature, objections to the Report and Recommendation, if any, and the remaining record, does hereby find and **ORDER:**

(1) The Court adopts the Report and Recommendation.

(2) The Court finds that petitioner failed to show that the state appellate courts' application of grounds 1 (sub-part 2); 3 (sub-part 2), 6 and 9 was contrary to, or an unreasonable application of, clearly established federal law and are dismissed.

(3) Petitioner failed to fairly present grounds 1 (sub-part 1), 2, 3 (sub-part 1), 4, 5, 7, 8, 10, 11 and 12 under federal law by invoking one complete round of Washington state court

1 appellate review and therefore, has not exhausted his state remedies as to these grounds for  
2 relief. Furthermore, petitioner's grounds 1 (sub-part 1), 2, 3 (sub-part 1), 4, 5, 7, 8, 10, 11 and 12  
3 are time-barred under Washington law and petitioner does not demonstrate cause and prejudice  
4 or a fundamental miscarriage of justice; therefore, grounds 1 (sub-part 1), 2, 3 (sub-part 1), 4, 5,  
5 7, 8, 10, 11 and 12 are procedurally barred. Accordingly, grounds 1 (sub-part 1); 2; 3 (sub-part  
6 1), 4, 5, 7, 8, 10, 11 and 12 are unexhausted and procedurally barred.

7 (4) The Court denies the issuance of a certificate of appealability.

8 (4) Petitioner's motion to appoint counsel (Dkt. 11) is denied as moot.

9 **DATED** this 14<sup>th</sup> day of March, 2016.

11   
12 Ronald B. Leighton

13 Ronald B. Leighton  
United States District Judge